

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Notice of Proposed Rulemaking)	
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Appropriate Regulatory Treatment for)	CS Docket No. 02-52
Broadband Access to the Internet Over)	
Cable Facilities)	
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COMMENTS OF DES PLAINES, IL

These comments are filed by the City of Des Plaines, IL in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, Des Plaines, IL believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Our community and the status of cable modem service.

Des Plaines is a City of 58,000 residents. It is served by AT & T Broadband and WideOpenWest, combined have approximately 15,000 subscribers. The cable systems serving our community offers subscribers analog cable, digital cable and high-speed cable modem services.

2. Our franchise and cable modem service.

Our franchises were issued in 1997 and 1998 and did not directly address cable modem service. However, under our franchise the definition of gross revenues is broad enough to include cable modem service.

“‘Gross Revenues’ means unless otherwise stated herein all amounts received or accrued by Grantee in whatever form ad from Subscribers in connection with the operation of Grantee’s Cable System within the Franchise

Area... 'Gross Revenues' shall also include any revenue received by any Affiliate of Grantee which such revenue in the ordinary course of business should have been paid to the Grantee in connection with the operation of its Cable System within the Franchise Area." (City of Des Plaines Franchise Agreements)

Pursuant to that provision, we were entitled to receive franchise fees on cable modem service. We received approximately \$60,000 in cable modem franchise fees in 2001. These payments were made in consideration of the grant of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, as long as the operator complied with the franchise terms. We estimate that we will lose \$ 300,000 over the next five years if we cannot charge a fee on revenues from cable modem service.

3. How we regulate cable modem service.

We regularly receive complaints from customers regarding the services provided by cable operators. These include complaints about traditional video programming services and about cable modem services. Last year, we received seventy-eight complaints regarding cable service. Twelve of those complaints dealt specifically with cable modem service. Responding to these complaints requires significant staff time and effort.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects:

- Cable modem service is marketed jointly with cable service.
- When we get complaints about promotional practices, the complaint may apply to both services.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- Customer service calls go to a single number, so telephone answering policies affect both.
- A customer may call a single location to schedule installation of cable service and cable modem service, and customer complaints about installations and missed appointments may relate to both services.

As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

4. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, broadband has to be available to the entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. The City of Des Plaines is committed to providing an up-to-date and user friendly web site to its residents. Our school districts and library are committed to I-Net programs and distance learning initiatives to help facilitate learning in our community. The funds that we obtain from cable modem franchise fees can help support these and other activities. If we lose those funds, it will be more difficult to protect consumers, and to promote broadband deployment in this community.

Respectfully submitted,

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June 14, 2002